
SOUTH AFRICA / JUDGMENT

S v Mlambo and Others (371/2010) [2010] ZAFSHC 99 (9 September 2010) [2010] ZAFSHC 99

COURT

Free State High Court, Bloemfontein

BEFORE

Kruger, Jordaan

CASE / FILE NUMBER

371/2010

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FREE STATE HIGH COURT, BLOEMFONTEIN

REPUBLIC OF SOUTH AFRICA

Review No. : 371/2010

In the review between:-

THE STATE

and

CLEMENT MLAMBO

MOTLAI MAKHETE

MARCO SITHOLE

MATTHEWS ARIAS

OSCAR TSIO

SECHOMANE MAKOKO

SOLOMON SITHOLE

JARIOS MLAMBO

LEBOHANG THAKANE

TEFASKO GOMBO

BENNETT TERIVY

JOHANNI MLAMBO

CORAM: KRUGER et JORDAAN, JJ

JUDGEMENT:

KRUGER, J

DELIVERED ON: 9 SEPTEMBER 2010

- [1] The magistrate sent this case on review with the request (i) that the name of Accused no. 3 as a person convicted and sentenced be deleted from the J15, and (ii) that the names of Accused no's 6 and 7 be inserted on the J15 as persons convicted and sentenced.
- [2] Some of the above-mentioned accused were convicted of (i) trespassing under Act 6 of 1959 and (ii) unauthorised borrowing under Act 50 of 1956. In all cases the sentence was a fine of R1600 or 12 months' imprisonment.
- [3] Confusion reigns supreme in the record of these proceedings. The confusion in respect of accused no. 3 seems to have arisen because accused no. 4, Matthews Arias, was described as accused no. 3. (see p. 13).
- [4] The J15 states:

"Accused 1, 3, 4, 8, 9, 11 guilty on both counts."

The magistrate in his letter dated 9 July 2010 says the J15 should state that the accused convicted are:-

1, 4, 6, 7, 8, 9, 11.

- [5] I sent a query to the magistrate pointing out the difficulties I had.

- [6] The magistrate responded as follows:

"Indeed the confusion in the above mentioned matter caused a serious prejudice."

I concur with the finding of the Honourable Judge that all the convictions be set aside for the reasons advanced. May I ask that the convictions be set aside."

- [7] The first question which arises is: Can the name of an accused which was not on the J15 as a convicted and sentenced person, be inserted later as a person who was convicted and sentenced?
- [8] Convicting and sentencing an accused is not simply a matter of inserting the name of the accused as a convicted person on the J15. An accused is found guilty by the court in its judgment. The entry on the J15 is a matter of record keeping; that entry is not the conviction.

- [9] Especially where there are multiple accused, judicial officers must keep a meticulous record. It is generally not a good idea to change the numbering of the accused after the proceedings have commenced.
- [10] The next question is whether the section 112(2) statements cover all the elements of the offence, in particular that the borrowing was done “with intent to use it for their own purpose”.
- [11] When a written plea of guilty is handed in under section 112(2), the presiding officer must ensure that all the elements of the charge have been admitted. In this case the second charge, unauthorised borrowing constituting a contravention of section 1(1) of the General Law Amendment Act 50 of 1956 criminalises removal of an object without the owner’s consent, with intent to use it for the borrower’s own purposes. This intent is an element of the offence, and should be admitted in the plea. In this

case, in the section 112(2) statements handed in, there is no reference to the intent of the borrower (accused). The magistrate

could not convict on that statement, and should have directed further enquiries to the accused. The usual remedy for non-compliance with section 112 is referral back to the magistrate under section 312, but because of the total confusion in this record, the proper recourse, to avoid prejudice to the accused, as the magistrate suggests is to set all the convictions and sentences aside.

- [12] In the result the convictions and sentences of all the accused are set aside.

KRUGER, J

I agree.

A. F. JORDAAN, J

/wm

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